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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 WESTERN DIVISION

18 PERFECT 10, INC., a California
19 corporation,

20 Plaintiff,

21 v.

22 GIGANEWS, INC., a Texas
23 Corporation; et al.

24 Defendants.

25 Case No.: 11-cv-07098-AB (JPRx)

26 [PROPOSED] ORDER GRANTING
27 JUDGMENT CREDITOR
28 GIGANEWS, INC.'S MOTION TO
LEVY ON JUDGMENT DEBTOR'S
INTELLECTUAL PROPERTY AND
APPOINT A RECEIVER

Date: February 27, 2017
Time: 10:00 a.m.
Courtroom: No. 4, 2nd Fl. (Spring Street)
Judge: Hon. André Birotte, Jr.

25 AND RELATED CROSS-ACTIONS
26

27
28 [PROPOSED] ORDER GRANTING
GIGANEWS'S MOTION TO LEVY
AND TO APPOINT A RECEIVER

CASE NO. 11-cv-07098-AB (SHx)

1 The Court has considered defendant and judgment creditor Giganews, Inc.’s
2 (“Giganews”) motion to levy on the intellectual property of plaintiff and judgment
3 debtor Perfect 10, Inc. (“Perfect 10”), and to appoint a receiver to carry out the
4 levy. (Dkt. No. 802.) Giganews moves under Fed. R. Civ. Proc. 69(a), and Cal.
5 Code Civ. Proc. §§ 695.010, 699.710, and 708.620., which together authorize the
6 district court to enforce a judgment through a writ of execution, and to appoint a
7 receiver to aid in executing the judgment. The Court finds good cause both to levy
8 on Perfect 10’s intellectual property and to appoint a receiver to carry that out, for
9 all of the reasons Giganews stated in its motion. The Court considered all of the
10 points Perfect 10 made in its opposition and finds that they lack merit. The Court
11 therefore **ORDERS** as follows:

12 1. The Court **GRANTS** Giganews’s motion.

13 2. The Court **APPOINTS** David J. Pasternak as a receiver to carry out a
14 levy on Perfect 10’s property in accordance with the remainder of this Order. For
15 the remainder of this order, the term “intellectual property” specifically includes but
16 is not limited to domain names, copyrights and copyright interests; and trademarks,
17 trademark interests, and associated goodwill; and related interests.

18 3. The receiver may seize and sell any and all intellectual property of
19 Perfect 10 in order to satisfy this Court’s judgment.

20 4. By virtue of the appointment of the receiver, the Court divests Perfect
21 10 of, and puts under the exclusive control of the receiver, any and all of the
22 intangible property, including domain names; copyrights or copyright interests; and
23 trademarks, trademark interests, and associated goodwill that Perfect 10 owns or
24 possesses.

25 5. The receiver shall assume sole and immediate possession, custody and
26 control of all of Perfect 10’s property and sell that property subject to this Court’s
27 confirmation and approval in satisfaction of the Judgment.

1 6. The receiver shall have the authority to assign and transfer Perfect 10's
 2 property, as further specified below.

3 7. The proceeds of any sales shall be used to satisfy the Judgment, less
 4 the receivership's reasonable costs and fees;

5 8. Any bid for, and purchase of, Perfect 10's property by Giganews may
 6 be credited against the amounts that Perfect 10 owes Giganews pursuant to the
 7 Judgment. Giganews need not use its own money to bid for, and purchase, Perfect
 8 10's property. Instead any successful bids and/or purchases may be credited against
 9 Perfect 10's judgment debt to Giganews.

10 9. The receiver may charge as interim fees his standard hourly billing
 11 rate, which is currently \$575 per hour, plus reimbursement of costs for the
 12 receiver's services. The receiver is authorized to employ the services of Pasternak
 13 & Pasternak, A Law Corporation (in which the receiver and his wife are
 14 shareholders); SoCal IP Law Group, LLP; and accountants, computer consultants,
 15 and other professionals in connection with his duties administering the receivership
 16 estate and to pay for those services in the amount of the normal fees charged by
 17 those professionals.

18 10. The receiver shall:

19 a. Take possession, custody and control of, and exclusively and in
 20 his sole discretion, operate, manage, control, exploit, and operate Perfect 10's
 21 property;

22 b. Collect all royalties, rents, issues, profits, and income resulting
 23 from or generated by Perfect 10's property;

24 c. Care for, preserve, operate and maintain Perfect 10's property;

25 d. Use (at his discretion) any tax identification or Social Security
 26 numbers previously used in connection with Perfect 10's property;

1 e. Enter into contracts as the receiver reasonably believes
2 necessary for the preservation of Perfect 10's property;

3 f. Institute and prosecute all suits as the receiver, upon obtaining
4 permission of the Court, he may reasonably believe to be necessary in connection
5 with Perfect 10's property, and may without further order of the Court defend all
6 suits and actions as may be instituted concerning Perfect 10's property;

7 g. Negotiate and make financial arrangements for any licenses or
8 permits that the receiver reasonably believes to be appropriate in connection with
9 Perfect 10's property;

10 h. Issue subpoenas, conduct and participate in discovery, take
11 depositions, pursue contempt actions, and otherwise pursue all remedies available
12 by law to ensure compliance with the receiver's authority under this Order;

13 i. Incur the expenses necessary for the care, preservation and
14 maintenance of Perfect 10's property; and

15 j. To the extent that there are funds available, pay such funds to
16 Giganews in satisfaction of this Court's Judgment.

17 11. Within sixty (60) days after the issuance of this Order, the receiver
18 shall file an inventory of all of the assets of which he has taken possession pursuant
19 to this Order;

20 12. The receiver shall prepare and serve monthly statements reflecting the
21 receiver's fees and administrative expenses, including fees and costs of the
22 accountants and attorneys and other professionals authorized by the Court, incurred
23 for each monthly period in the operation and administration of the receivership
24 estate. Upon service of each statement, the receiver may disburse from estate
25 funds, if any, the amount of each statement. Notwithstanding periodic payment of
26 fees and expenses, all fees and expenses shall be submitted to the Court for its
27 approval and confirmation, in the form of either a properly noticed interim request

1 for fees, a stipulation of all parties, or in the receiver's interim or final account and
2 report;

3 13. The receiver may employ agents, employees, clerks, accountants, and
4 property managers to administer the receivership estate, purchase materials,
5 supplies and services, and pay for them at the ordinary and usual rates out of the
6 funds which shall come into the receiver's possession and shall do all things and
7 incur the risks and obligations ordinarily incurred by owners, managers, and
8 operators of similar property. No such risk or obligation so incurred shall be the
9 personal risk or obligation of the receiver, but shall be the risk and obligation of the
10 receivership estate;

11 14. The receiver is empowered to establish bank accounts for the deposit
12 of monies and funds collected and received in connection with the receivership
13 estate, at federally insured banking institutions or savings associations which are
14 not parties to this case. Monies coming into the possession of the receiver and not
15 expended for any purposes authorized by this Order shall be held by the receiver in
16 interest-bearing accounts;

17 15. The receiver may issue Receivership Certificates in increments of at
18 least \$10,000 bearing interest at eight percent (8%) per annum for up to \$250,000 to
19 any person or parties, in order to fund and carry out the receivership. All funds
20 loaned to the receiver pursuant to such Receivership Certificate shall be deemed to
21 be a lien of first priority which shall be repaid prior to all other encumbrances and
22 claims, other than costs of administration.

23 16. The receiver and the parties to this case may at any time apply to this
24 Court for further or other instructions or orders and for further powers necessary to
25 enable the receiver to perform the receiver's duties properly;

26 17. All monies coming into the receiver's possession shall be expended
27 only for the purposes herein authorized, unless otherwise ordered by Court;

1 18. The receiver shall determine upon taking possession of the property
2 whether in the receiver's judgment there is sufficient insurance coverage. With
3 respect to any insurance coverage, the receiver shall be named as the insured on the
4 policies for the period that the receiver shall be in possession of the property. If
5 sufficient insurance coverage does not exist, the Receiver shall immediately notify
6 the parties to this lawsuit and shall have thirty (30) calendar days to procure
7 sufficient insurance for the property; provided, however, that if the receiver does
8 not have sufficient funds to do so, the receiver shall seek instructions from the
9 Court with regard to whether insurance shall be obtained and how it is to be paid
10 for. If consistent with existing law, the receiver shall not be responsible for claims
11 arising from the lack of procurement or inability to obtain insurance;

12 19. Discharge of the receiver shall require a court order after a properly
13 noticed motion approving the receiver's final report and account and exoneration of
14 the receiver's bond;

15 20. The parties, and each of them, on receipt of this Order shall provide
16 the receiver with all tax identification numbers utilized in connection with Perfect
17 10's property. The receiver shall also be entitled to utilize the tax identification
18 numbers during his possession of Perfect 10's property. The Receiver shall not be
19 responsible for filing any federal or state tax returns on behalf of Perfect 10.

20 21. The receiver is authorized to have all mail, other deliveries, and
21 notices concerning Perfect 10's property forwarded to an address to be designated
22 by him;

23 22. IT IS FURTHER ORDERED that Perfect 10 and its respective owners,
24 officers, directors, agents, partners, property managers, employees, assignees,
25 successors, attorneys, representatives, and all persons acting under, in concert with,
26 or for them (specifically including Norman Zada, Melanie Poblete, Bruce Hersh,
27 Gwendalyn Augustine, Jennifer Snow McCall, and Sean Chumura):

1 a. Shall immediately relinquish and turn over possession of Perfect
2 10's intellectual property, including but not limited to all or their profits and
3 proceeds (including any cash) to the receiver forthwith upon his appointment
4 becoming effective;

5 b. Shall immediately turn over to the receiver and direct all other
6 third parties in possession thereof to turn over to the receiver all registrations,
7 books, records, books of account, ledgers, operating statements, budgets, bills,
8 contracts, choses in action, and all other business records relating to Perfect 10's
9 intellectual property, wherever located, and in whatever mode maintained,
10 including information contained on computers, and any and all software or
11 databases relating thereto as well as all banking records, statements and cancelled
12 checks;

13 c. Shall immediately turn over to the receiver all documents that
14 pertain to all registrations, licenses, permits, or government actions or approvals
15 relating to Perfect 10's intellectual property and shall immediately advise the
16 receiver of any social security or taxpayer identification numbers used in
17 connection with Perfect 10's intellectual property;

18 d. Shall immediately advise the receiver as to the nature and extent
19 of insurance coverage for Perfect 10's intellectual property. Perfect 10 shall
20 immediately name the receiver as an insured on the insurance policy(ies) for the
21 period that the receiver shall be in possession of Perfect 10's intellectual property.
22 Perfect 10 and its agents and representatives are prohibited from canceling,
23 reducing or modifying any and all insurance coverage currently in existence with
24 respect to Perfect 10's domain names, copyrights and/or trademarks and
25 accompanying goodwill and shall fully assist receiver in transferring said insurance
26 for the benefit of the receiver; and

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1 e. Shall cooperate with and fully assist the receiver with respect to
 2 his possession and attempts to sell Perfect 10's property or interests therein,
 3 including but not limited to promptly responding to any inquiry by the Receiver for
 4 information;

5 23. IT IS FURTHER ORDERED that, immediately and until such further
 6 Order of this Court, Perfect 10 and its agents, partners, property managers,
 7 employees, assignees, successors, attorneys, representatives, and all other persons
 8 acting in concert with them who have actual or constructive knowledge of this
 9 Order, and their agents and employees shall not:

10 a. Commit or permit any waste on any of Perfect 10's property or
 11 any part thereof, or suffer or commit or permit any act on Perfect 10's property or
 12 any part thereof, or suffer or commit or permit any act on Perfect 10's property or
 13 any part thereof in violation of any law, or alienate, remove, transfer, encumber or
 14 otherwise dispose of any of Perfect 10's property or any part thereof;

15 b. Directly or indirectly interfere in any manner with the discharge
 16 of the receiver's duties under this Order or the receiver's possession of and
 17 operation and attempts to sell Perfect 10's property;

18 c. Expend, disburse, transfer, assign, sell, convey, devise, pledge,
 19 mortgage, create a security interest in, encumber, conceal or in any manner
 20 whatsoever deal in or dispose of the whole or any part of Perfect 10's property or
 21 any of its proceeds without prior specific Order of this Court;

22 d. Withhold any of Perfect 10's property or books or records
 23 regarding Perfect 10's property, or funds generated from Perfect 10's property from
 24 the receiver; and

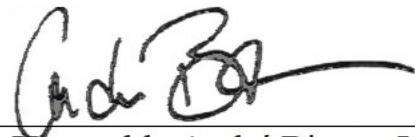
25 e. Do any act which will, or which will tend to impair, defeat,
 26 divert, prevent or prejudice the preservation of Perfect 10's property, profits, or
 27 proceeds;

1 24. The parties shall serve the receiver with all papers in this action and
2 shall give notice to the receiver about all proceedings;

3 25. The parties shall jointly and severally defend and indemnify and hold
4 harmless the receiver and his employees against any claims or actions, including
5 but not limited to any criminal proceedings, that result from his possession,
6 operation, and attempts to sell Perfect 10's property or interests therein as this
7 Court's receiver.

8 IT IS SO ORDERED:

9
10 DATED: February 24, 2017



The Honorable André Birotte Jr.
United States District Judge
Central District of California

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